States, 289 F. 2d 308 (C.A. 5).* At the very least, the matter should be remanded to the Court of Appeals to permit it to reevaluate the matter in light of this defect in the record.

11. So exceptional is this situation that such relief is appropriate even though the matter of the defect in the record was not pressed upon the court below. Cf. *Hormel* v. *Helvering*, 312 U.S. 552, 557; *United States* v. *Atkinson*, 297 U.S. 157, 160. Where an injustice might result—as it most certainly would if the court reporter's failure to fulfill his statutory duty makes this appeal meaningless—this Court should act to restore the right of these federal court defendants to a complete transcription of their trial proceeding. The very integrity of the right to appeal demands such corrective action.

Respectfully submitted,

DUDLEY YOEDICKE
Whitney Building
New Orleans, Louisiana

EUGENE GRESSMAN
1730 K Street, N. W.
Washington 6, D. C.

Counsel for Petitioner
Kalman Greenhill

LEON D. HUBERT, JR.
540 Oil & Gas Building
New Orleans 12, Louisiana

Counsel for Petitioner
Frank Proctor

July 25, 1962.

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* Cf. *Communist Party* v. *Subversive Activities Control Board*, 351 U.S. 115; *Mesarosh* v. *United States*, 352 U.S. 1; *United States* v. *Shotwell Mfg. Co.*, 355 U.S. 233.

APPENDIX

APPENDIX

Affidavit of A. B. Hale

STATE OF ALABAMA)
JEFFERSON COUNTY)

Before me, a notary public in and for said state and said county, personally appeared one A. B. Hale, who is known to me and who, after being duly sworn, deposes and says as follows:

Affiant's name and address is A. B. Hale, 9000 4th Avenue South, Birmingham, Alabama.

For a period of approximately 16 years affiant was the official court reporter of the United States District Court for the Southern Division of the Northern District of Alabama.

Affiant was the official court reporter charged with the responsibility of recording the testimony in the case of United States of America v. Kalman Greenhill, et al, Civil Action No. 14592, which was tried at Birmingham, Alabama, from the period of April 19, 1960 to April 30, 1960. The closing arguments and final summation of counsel representing both the United States Government and the defendant were made in this cause. None of these arguments, however, were either recorded or written up so as to become a part of the record in the cause. Affiant did not record any portion of the final argument of either counsel because it was his custom not to take down any such arguments. Affiant knows of no agreement made by counsel to the effect that this argument should not be recorded, but to the contrary affiant merely followed what had come to be his usual custom relative to not recording final arguments

of counsel. No other court reporter was present during the trial of this cause.

/s/ A. B. Hale
Affiant

Sworn to and subscribed before me this 7 day of June, 1962.

/s/ Harold I. Apolinsky
Notary Public

My commission expires: November 2, 1965

Affidavit of L. Drew Redden

State of Alabama)
Jefferson County)

Before me, a notary public in and for said state and county, personally appeared L. Drew Redden, who is known to me and who, after being duly sworn, deposes and says as follows:

Affiant's name is L. Drew Redden. Affiant is a duly licensed and practicing attorney in the City of Birmingham, Alabama. Affiant was counsel of record for Kalman Greenhill, in the case of United States of America v. Kalman Greenhill, et al, Civil Action No. 14592, in the Southern Division of the Northern District of Alabama, which was tried before the Honorable Hobart Grooms, United States District Judge, during the period of April 19, 1960, to April 30, 1960.

Counsel representing the United States Government as well as affiant made closing arguments to the jury in said cause. Affiant is informed that none of these closing arguments were recorded by the official court reporter, A. B. Hale. There was no agreement between counsel author-

izing said court reporter to refrain from recording said arguments.

/s/ L. Drew Redden
Affiant

Sworn to and subscribed before me this 7th day of June, 1962.

/s/ Harold I. Apolinsky
Notary Public

My commission expires: November 2, 1965

Affidavit of Kalman Greenhill

State of New York }
County of New York } ss

Kalman Greenhill being duly sworn deposes and says:

I am one of the Petitioners in the above entitled action and reside at 9480 Charleville Boulevard, Beverly Hills, California. I am making this affidavit in connection with a petition for a writ of certiorari to the United States Court of Appeals for the Fifth District.

I will attempt to recall in as much detail as I can remember both general and specific statements made by Mr. Longshore, who was the United States Attorney in Birmingham, Alabama, and who tried this matter in the United States District Court for the Northern District of Alabama.

During the course of this summation Mr. Longshore upon many occasions, possibly as many as ten or fifteen occasions, referred to the fact that I came from the City of New York, that I had conducted my business in the City of New York and was not familiar with the practices and the ethics and character of a southern city and a south-

ern community. Mr. Longshore made reference to the fact that the business of both Mr. Proctor and myself was conducted in a highly extravagant and luxurious operation in a "big city."

I further respectfully recall continous reference to the fact that Mr. Norman Williams was an accountant who lived and practiced in Birmingham, Alabama, who was a local citizen whose word could be taken at face value, and they would have to give more weight to his testimony than that of lawyers and certified public accountants who lived and practiced in the City of New York.

I further recall that upon many occasions and particularly towards the tail end of Mr. Longshore's summation, he referred to the fact that "these northerners" went to the South and particularly to Birmingham, Alabama, and thought that they could easily deceive and hoodwink the "South" and its residents and inhabitants.

It is extremely difficult in view of the time which has elapsed to recall in more specific form any particular and detailed references. However, I respectfully submit that the major portion and the greater part of Mr. Longshore's summation dealt with "the South against the North" and continuous references in a similar vein.

/s/ KALMAN GREENHILL

Sworn to before me this 14th day of June, 1962.

/s/ MILDRED KORLAND
Notary Public, State of New York

Commission expires March 30, 1963

Affidavit of Frank Proctor

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

FRANK PROCTOR, being duly sworn deposes and says:

I am one of the Petitioners for a writ of certiorari to the United States Court of Appeals for the Fifth District. I reside at Scarsdale Manor, Scarsdale, New York. This affidavit pertains to the summation of Mr. Longshore who was the United States Attorney in the Birmingham Court that tried this case in April of 1960. My recollection is that Mr. Longshore's summation was of some 45 minutes' duration. Constant repetition was made of the fact that funds flowed from the South to the North and particularly over and over the phrase "these New Yorkers" or "these men from New York" was used.

I recall that reference was made several times in the summation to the fact that these New Yorkers came to Birmingham to do business with these witnesses. Reference was also made in the summation to the New York offices that we have and the New York way of doing business.

A specific phrase recalled was one concerning Norman Williams, the accountant. The phrase was "We know Norman Williams and we believe what he says." In connection, the statement was repeatedly made concerning the flow of $500,000 as outlined on charts prepared by Norman Williams.

The close of the summation was again devoted to the fact of the New Yorkers who had come into Birmingham and reference made concerning New York witnesses and that accountants and attorneys had all been New Yorkers. Specific statements from 2 years ago cannot be recalled other than the phrasing concerning Norman Williams but

the entire summation was dominated by the aforementioned flow of funds South to North and New Yorker offices.

/s/ FRANK PROCTOR

Sworn to before me this 11th day of June, 1962.

/s/ JOHN S. SETRIAN
Notary Public, State of New York.

Commission expires March 30, 1963

Affidavit of Karl B. Friedman

STATE OF ALABAMA)
JEFFERSON COUNTY)

Before me, the undersigned authority, in and for said county in said state personally appeared Karl B. Friedman who being known to me and being by me first duly sworn did depose and say on his oath as follows:

"I am Karl B. Friedman, a resident of Birmingham, Alabama, and a practicing attorney here in Birmingham, Alabama. I commenced to represent Kalman Greenhill, and for a period of time Frank Proctor, in the spring of 1958. I assisted in the trial of the criminal proceedings in the United States District Court for the Southern Division of the Northern District in the State of Alabama wherein Kalman Greenhill and Frank Proctor, along with others were indicted and tried,

"I am very certain that defense counsel did not enter into any agreement or understanding with the prosecuting attorney or with the court in respect to the recordation and transcription of the closing arguments. I was not aware that such were not recorded and transcribed. I recall very clearly sitting at the trial table with Mr. Greenhill to my left, and Mr. Redden to my right. To the right of Mr.

Redden was Mr. Proctor, to his right was Colonel John D. Hill. Further down the table to the right were an assistant District Attorney to government representatives, and finally the prosecuting attorney, Mr. Longshore. During the course of the summation by Mr. Longshore, Mr. Greenhill and I had brief conversations in which we were both considerably disturbed by the continued references of Mr. Longshore to the fact that these people had come down from the north to take the money from the people in the south and that they had taken the money back up north and that nothing ever came south again. I remember some specific references to the fact that the offices of Frank Proctor and Associates in New York were very plush and elaborate like some fancy penthouse up in New York City. It seemed to me that the entire emphasis on the argument by Mr. Longshore was aimed at prejudicing the minds of the jury against Mr. Proctor and Mr. Greenhill because they came from New York.

"I cannot develop a specific recollection of the actual verbage or language used, but I do know that I have had many conversations with Mr. Greenhill, and with the various other attorneys interested in the case about the emphasis which was placed as indicated above and these constitute my best recollections."

/s/ KARL B. FRIEDMAN

Sworn to and subscribed before me this the 14th day of June, 1962.

/s/ ANNE K. HEFLIN
Notary Public

[SEAL]